

_____ BILL NO. _____

INTRODUCED BY _____
(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING CONDITIONS THAT ESTABLISH THE LIABILITY OF A SELLER OF A PRODUCT THAT CAUSES PHYSICAL HARM TO A USER OR A CONSUMER; REMOVING AFFIRMATIVE DEFENSES ASSOCIATED WITH CONTRIBUTORY NEGLIGENCE; AMENDING SECTION 27-1-719, MCA, AND SECTION 11, CHAPTER 429, LAWS OF 1997; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 27-1-719, MCA, is amended to read:

"27-1-719. ~~(Temporary)~~ Liability of seller of product for physical harm to user or consumer person or property -- definition. (1) A seller of a product who sells a defective product is liable for harm that is caused to a person or to property by the defect.

(2) A product is defective if when the product left a seller's control the product contained a manufacturing defect, was defective in design, or was defective because of inadequate instructions or warning. A product:

(a) contains a manufacturing defect when the product departs from its intended design even though all possible care was exercised in the preparation and marketing of the product;

(b) is defective in design when the reasonably foreseeable risks of harm posed by the product could have been reduced or avoided by the adoption of a reasonable alternative design by the seller and the omission of the alternative design renders the product not reasonably safe;

(c) is defective because of inadequate instructions or warnings when the reasonably foreseeable risks of harm posed by the product could have been reduced or avoided by the provision of reasonable instructions or warnings by the seller and the omission of the instructions or warnings renders the product not reasonably safe.

~~(1)(3)~~ As used in this section, "seller" means a manufacturer, wholesaler, or retailer.

~~(2) A person who sells a product in a defective condition unreasonably dangerous to a user or consumer or to the property of a user or consumer is liable for physical harm caused by the product to the ultimate user or consumer or to his property if:~~

- ~~1 (a) the seller is engaged in the business of selling such a product; and~~
~~2 (b) the product is expected to and does reach the user or consumer without substantial change in the~~
~~3 condition in which it is sold.~~
~~4 (3) The provisions of subsection (2) apply even if:~~
~~5 (a) the seller exercised all possible care in the preparation and sale of his product; and~~
~~6 (b) the user or consumer did not buy the product from or enter into any contractual relation with the~~
~~7 seller.~~
~~8 (4) Subsection (2)(b) does not apply to a claim for relief based upon improper product design.~~
~~9 (5) Except as provided in this subsection, contributory negligence is not a defense to the liability of a~~
~~10 seller, based on strict liability in tort, for personal injury or property damage caused by a defectively manufactured~~
~~11 or defectively designed product. A seller named as a defendant in an action based on strict liability in tort for~~
~~12 damages to person or property caused by a defectively designed or defectively manufactured product may assert~~
~~13 the following affirmative defenses against the user or consumer, the legal representative of the user or consumer,~~
~~14 or any person claiming damages by reason of injury to the user or consumer:~~
~~15 (a) The user or consumer of the product discovered the defect or the defect was open and obvious and~~
~~16 the user or consumer unreasonably made use of the product and was injured by it.~~
~~17 (b) The product was unreasonably misused by the user or consumer and such misuse caused or~~
~~18 contributed to the injury.~~
~~19 (6) The affirmative defenses referred to in subsection (5) mitigate or bar recovery and must be applied~~
~~20 in accordance with the principles of comparative negligence set forth in 27-1-702. (Terminates on occurrence of~~
~~21 contingency--sec. 11(2), Ch. 429, L. 1997.)~~
~~22 27-1-719. (Effective on occurrence of contingency) Liability of seller of product for physical harm~~
~~23 to user or consumer. (1) As used in this section, "seller" means a manufacturer, wholesaler, or retailer.~~
~~24 (2) A person who sells a product in a defective condition unreasonably dangerous to a user or consumer~~
~~25 or to the property of a user or consumer is liable for physical harm caused by the product to the ultimate user or~~
~~26 consumer or to the user's or consumer's property if:~~
~~27 (a) the seller is engaged in the business of selling such a product; and~~
~~28 (b) the product is expected to and does reach the user or consumer without substantial change in the~~
~~29 condition in which it is sold.~~
~~30 (3) The provisions of subsection (2) apply even if:~~

~~_____ (a) the seller exercised all possible care in the preparation and sale of the product; and~~
~~_____ (b) the user or consumer did not buy the product from or enter into any contractual relation with the~~
~~seller.~~
~~_____ (4) Subsection (2)(b) does not apply to a claim for relief based upon improper product design.~~
~~_____ (5) Contributory fault is a defense to the liability of a seller, based on strict liability in tort, for personal~~
~~injury or property damage caused by a defectively manufactured or defectively designed product. A seller named~~
~~as a defendant in an action based on strict liability in tort for damages to a person or property caused by a~~
~~defectively designed or defectively manufactured product may assert the following affirmative defenses against~~
~~the user or consumer, the legal representative of the user or consumer, or any person claiming damages by~~
~~reason of injury to the user or consumer:~~
~~_____ (a) The user or consumer of the product discovered the defect or the defect was open and obvious and~~
~~the user or consumer unreasonably made use of the product and was injured by it.~~
~~_____ (b) The product was unreasonably misused by the user or consumer and the misuse caused or~~
~~contributed to the injury.~~
~~_____ (6) The affirmative defenses referred to in subsection (5) mitigate or bar recovery and must be applied~~
~~in accordance with the principles of comparative fault set forth in 27-1-702 and 27-1-705."~~

Section 2. Section 11, Chapter 429, Laws of 1997, is amended to read:

"Section 11. Contingent effective dates. (1) [This act] is effective on May 11, 1997, if _____ Bill No. _____
[LC1155] House Bill No. 571 is not passed and approved.

(2) If _____ Bill No. _____ [LC1155] House Bill No. 571 is passed and approved and is invalidated or is found
to be unconstitutional by the Montana supreme court, [this act] is [sections 1 through 5 and 7 through 10] and this
section are effective on the day after the effective date of the invalidation or of the finding of unconstitutionality."

NEW SECTION. Section 3. Saving clause. [This act] does not affect rights and duties that matured,
penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. Section 4. Effective date. [This act] is effective on passage and approval.

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